

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**FREDERICA DEBORAH YARBOROUGH**  
8081 Holland Drive, Apt. 10L  
Huntington Beach, CA 92647

**Registered Nurse License No. 624872**

Respondent

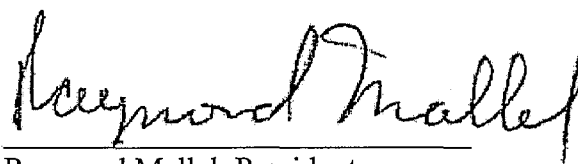
Case No. 2012-142

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **March 8, 2013.**

IT IS SO ORDERED **February 6, 2013.**



Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

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10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-142

13 **FREDERICA DEBORAH YARBOROUGH**  
14 **8081 Holland Drive, Apt. 10L**  
**Huntington Beach, CA 92647**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

15 **Registered Nurse License No. 624872**

16 Respondent.

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19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of  
23 Registered Nursing. She brought this action solely in her official capacity and is represented in  
24 this matter by Kamala D. Harris, Attorney General of the State of California, by Rita M. Lane,  
25 Deputy Attorney General.

26 2. Respondent Frederica Deborah Yarborough (Respondent) is represented in this  
27 proceeding by attorney Benjamin Theule, whose address is: 964 Fifth Avenue, Suite 214, San  
28 Diego, CA 92101.

3. On or about August 25, 2003, the Board of Registered Nursing issued Registered Nurse License No. 624872 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2012-142 and will expire on June 30, 2013, unless renewed.

## JURISDICTION

4. Accusation No. 2012-142 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 1, 2011. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 2012-142 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2012-142. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 2012-142.

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10. Respondent agrees that her Registered Nurse License is subject to discipline and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

## CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1           4.     **Residency, Practice, or Licensure Outside of State.** Periods of residency or  
2 practice as a registered nurse outside of California shall not apply toward a reduction of this  
3 probation time period. Respondent's probation is tolled, if and when she resides outside of  
4 California. Respondent must provide written notice to the Board within 15 days of any change of  
5 residency or practice outside the state, and within 30 days prior to re-establishing residency or  
6 returning to practice in this state.

7           Respondent shall provide a list of all states and territories where she has ever been licensed  
8 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide  
9 information regarding the status of each license and any changes in such license status during the  
10 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing  
11 license during the term of probation.

12           5.     **Submit Written Reports.** Respondent, during the period of probation, shall submit  
13 or cause to be submitted such written reports/declarations and verification of actions under  
14 penalty of perjury, as required by the Board. These reports/declarations shall contain statements  
15 relative to Respondent's compliance with all the conditions of the Board's Probation Program.  
16 Respondent shall immediately execute all release of information forms as may be required by the  
17 Board or its representatives.

18           Respondent shall provide a copy of this Decision to the nursing regulatory agency in every  
19 state and territory in which she has a registered nurse license.

20           6.     **Function as a Registered Nurse.** Respondent, during the period of probation, shall  
21 engage in the practice of registered nursing in California for a minimum of 24 hours per week for  
22 6 consecutive months or as determined by the Board.

23           For purposes of compliance with the section, "engage in the practice of registered nursing"  
24 may include, when approved by the Board, volunteer work as a registered nurse, or work in any  
25 non-direct patient care position that requires licensure as a registered nurse.

26           The Board may require that advanced practice nurses engage in advanced practice nursing  
27 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

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1 If Respondent has not complied with this condition during the probationary term, and  
2 Respondent has presented sufficient documentation of her good faith efforts to comply with this  
3 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an  
4 extension of Respondent's probation period up to one year without further hearing in order to  
5 comply with this condition. During the one year extension, all original conditions of probation  
6 shall apply.

7 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain  
8 prior approval from the Board before commencing or continuing any employment, paid or  
9 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
10 performance evaluations and other employment related reports as a registered nurse upon request  
11 of the Board.

12 Respondent shall provide a copy of this Decision to her employer and immediate  
13 supervisors prior to commencement of any nursing or other health care related employment.

14 In addition to the above, Respondent shall notify the Board in writing within seventy-two  
15 (72) hours after she obtains any nursing or other health care related employment. Respondent  
16 shall notify the Board in writing within seventy-two (72) hours after she is terminated or  
17 separated, regardless of cause, from any nursing, or other health care related employment with a  
18 full explanation of the circumstances surrounding the termination or separation.

19 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding  
20 Respondent's level of supervision and/or collaboration before commencing or continuing any  
21 employment as a registered nurse, or education and training that includes patient care.

22 Respondent shall practice only under the direct supervision of a registered nurse in good  
23 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods  
24 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are  
25 approved.

26 Respondent's level of supervision and/or collaboration may include, but is not limited to the  
27 following:

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1 (a) Maximum - The individual providing supervision and/or collaboration is present in  
2 the patient care area or in any other work setting at all times.

3 (b) Moderate - The individual providing supervision and/or collaboration is in the patient  
4 care unit or in any other work setting at least half the hours Respondent works.

5 (c) Minimum - The individual providing supervision and/or collaboration has person-to-  
6 person communication with Respondent at least twice during each shift worked.

7 (d) Home Health Care - If Respondent is approved to work in the home health care  
8 setting, the individual providing supervision and/or collaboration shall have person-to-person  
9 communication with Respondent as required by the Board each work day. Respondent shall  
10 maintain telephone or other telecommunication contact with the individual providing supervision  
11 and/or collaboration as required by the Board during each work day. The individual providing  
12 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to  
13 patients' homes visited by Respondent with or without Respondent present.

14 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any  
15 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,  
16 or for an in-house nursing pool.

17 Respondent shall not work for a licensed home health agency as a visiting nurse unless the  
18 registered nursing supervision and other protections for home visits have been approved by the  
19 Board. Respondent shall not work in any other registered nursing occupation where home visits  
20 are required.

21 Respondent shall not work in any health care setting as a supervisor of registered nurses.  
22 The Board may additionally restrict Respondent from supervising licensed vocational nurses  
23 and/or unlicensed assistive personnel on a case-by-case basis.

24 Respondent shall not work as a faculty member in an approved school of nursing or as an  
25 instructor in a Board approved continuing education program.

26 Respondent shall work only on a regularly assigned, identified and predetermined  
27 worksite(s) and shall not work in a float capacity.

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1 If Respondent is working or intends to work in excess of 40 hours per week, the Board may  
2 request documentation to determine whether there should be restrictions on the hours of work.

3 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and  
4 successfully complete a course(s) relevant to the practice of registered nursing no later than six  
5 months prior to the end of her probationary term.

6 Respondent shall obtain prior approval from the Board before enrolling in the course(s).  
7 Respondent shall submit to the Board the original transcripts or certificates of completion for the  
8 above required course(s). The Board shall return the original documents to Respondent after  
9 photocopying them for its records.

10 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its  
11 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the  
12 amount of \$2,000. Respondent shall be permitted to pay these costs in a payment plan approved  
13 by the Board, with payments to be completed no later than three months prior to the end of the  
14 probation term.

15 If Respondent has not complied with this condition during the probationary term, and  
16 Respondent has presented sufficient documentation of her good faith efforts to comply with this  
17 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an  
18 extension of Respondent's probation period up to one year without further hearing in order to  
19 comply with this condition. During the one year extension, all original conditions of probation  
20 will apply.

21 12. **Violation of Probation.** If Respondent violates the conditions of her probation, the  
22 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order  
23 and impose the stayed discipline (revocation/suspension) of Respondent's license.

24 If during the period of probation, an accusation or petition to revoke probation has been  
25 filed against Respondent's license or the Attorney General's Office has been requested to prepare  
26 an accusation or petition to revoke probation against Respondent's license, the probationary  
27 period shall automatically be extended and shall not expire until the accusation or petition has  
28 been acted upon by the Board.

1       13.   **License Surrender.** During Respondent's term of probation, if she ceases practicing  
2 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,  
3 Respondent may surrender her license to the Board. The Board reserves the right to evaluate  
4 Respondent's request and to exercise its discretion whether to grant the request, or to take any  
5 other action deemed appropriate and reasonable under the circumstances, without further hearing.  
6 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be  
7 subject to the conditions of probation.

8       Surrender of Respondent's license shall be considered a disciplinary action and shall  
9 become a part of Respondent's license history with the Board. A registered nurse whose license  
10 has been surrendered may petition the Board for reinstatement no sooner than the following  
11 minimum periods from the effective date of the disciplinary decision:

12       (1)     Two years for reinstatement of a license that was surrendered for any reason other  
13 than a mental or physical illness; or

14       (2)     One year for a license surrendered for a mental or physical illness.

15       14.   **Physical Examination.** Within 45 days of the effective date of this Decision,  
16 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician  
17 assistant, who is approved by the Board before the assessment is performed, submit an  
18 assessment of the Respondent's physical condition and capability to perform the duties of a  
19 registered nurse, including a determination as set forth below in the condition titled "Rule-Out  
20 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to  
21 the Board. If medically determined, a recommended treatment program will be instituted and  
22 followed by the Respondent with the physician, nurse practitioner, or physician assistant  
23 providing written reports to the Board on forms provided by the Board.

24       If Respondent is determined to be unable to practice safely as a registered nurse, the  
25 licensed physician, nurse practitioner, or physician assistant making this determination shall  
26 immediately notify the Board and Respondent by telephone, and the Board shall request that the  
27 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall  
28 immediately cease practice and shall not resume practice until notified by the Board. During this

1 period of suspension, Respondent shall not engage in any practice for which a license issued by  
2 the Board is required until the Board has notified Respondent that a medical determination  
3 permits Respondent to resume practice. This period of suspension will not apply to the reduction  
4 of this probationary time period.

5 If Respondent fails to have the above assessment submitted to the Board within the 45-day  
6 requirement, Respondent shall immediately cease practice and shall not resume practice until  
7 notified by the Board. This period of suspension will not apply to the reduction of this  
8 probationary time period. The Board may waive or postpone this suspension only if significant,  
9 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
10 by Respondent to obtain the assessment, and a specific date for compliance must be provided.  
11 Only one such waiver or extension may be permitted.

12 15. **Mental Health Examination.** Respondent shall, within 45 days of the effective date  
13 of this Decision, have a mental health examination including psychological testing as appropriate  
14 to determine her capability to perform the duties of a registered nurse, including a determination  
15 as set forth below in the condition titled "Rule-Out Substance Abuse Assessment." The  
16 examination will be performed by a psychiatrist, psychologist or other licensed mental health  
17 practitioner approved by the Board. The examining mental health practitioner will submit a  
18 written report of that assessment and recommendations to the Board. All costs are the  
19 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a  
20 result of the mental health examination will be instituted and followed by Respondent.

21 If Respondent is determined to be unable to practice safely as a registered nurse, the  
22 licensed mental health care practitioner making this determination shall immediately notify the  
23 Board and Respondent by telephone, and the Board shall request that the Attorney General's  
24 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease  
25 practice and may not resume practice until notified by the Board. During this period of  
26 suspension, Respondent shall not engage in any practice for which a license issued by the Board  
27 is required, until the Board has notified Respondent that a mental health determination permits

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1 Respondent to resume practice. This period of suspension will not apply to the reduction of this  
2 probationary time period.

3 If Respondent fails to have the above assessment submitted to the Board within the 45-day  
4 requirement, Respondent shall immediately cease practice and shall not resume practice until  
5 notified by the Board. This period of suspension will not apply to the reduction of this  
6 probationary time period. The Board may waive or postpone this suspension only if significant,  
7 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
8 by Respondent to obtain the assessment, and a specific date for compliance must be provided.  
9 Only one such waiver or extension may be permitted.

10 16. **Rule-Out Substance Abuse Assessment.** If the examiner conducting the physical  
11 and/or mental health examination determines that the respondent is dependent upon drugs or  
12 alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol  
13 dependence in remission), that might reasonably affect the safe practice of nursing, then the  
14 respondent must further comply with the following additional terms and conditions of probation:

15 A. **Participate in Treatment/Rehabilitation Program for Chemical**

16 **Dependence.** Respondent, at her expense, shall successfully complete during the  
17 probationary period or shall have successfully completed prior to commencement  
18 of probation a Board-approved treatment/rehabilitation program of at least six  
19 months duration. As required, reports shall be submitted by the program on forms  
20 provided by the Board. If Respondent has not completed a Board-approved  
21 treatment/rehabilitation program prior to commencement of probation,  
22 Respondent, within 45 days from the effective date of the decision, shall be  
23 enrolled in a program. If a program is not successfully completed within the first  
24 nine months of probation, the Board shall consider Respondent in violation of  
25 probation.

26 Based on Board recommendation, each week Respondent shall be required  
27 to attend at least one, but no more than five 12-step recovery meetings or  
28 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse

1 support group as approved and directed by the Board. If a nurse support group is  
2 not available, an additional 12-step meeting or equivalent shall be added.

3 Respondent shall submit dated and signed documentation confirming such  
4 attendance to the Board during the entire period of probation. Respondent shall  
5 continue with the recovery plan recommended by the treatment/rehabilitation  
6 program or a licensed mental health examiner and/or other ongoing recovery  
7 groups.

8 **B. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent  
9 shall completely abstain from the possession, injection or consumption by any  
10 route of all controlled substances and all psychotropic (mood altering) drugs,  
11 including alcohol, except when the same are ordered by a health care professional  
12 legally authorized to do so as part of documented medical treatment. Respondent  
13 shall have sent to the Board, in writing and within fourteen (14) days, by the  
14 prescribing health professional, a report identifying the medication, dosage, the  
15 date the medication was prescribed, the Respondent's prognosis, the date the  
16 medication will no longer be required, and the effect on the recovery plan, if  
17 appropriate.

18 Respondent shall identify for the Board a single physician, nurse  
19 practitioner or physician assistant who shall be aware of Respondent's history of  
20 substance abuse and will coordinate and monitor any prescriptions for Respondent  
21 for dangerous drugs, controlled substances or mood-altering drugs. The  
22 coordinating physician, nurse practitioner, or physician assistant shall report to the  
23 Board on a quarterly basis Respondent's compliance with this condition. If any  
24 substances considered addictive have been prescribed, the report shall identify a  
25 program for the time limited use of any such substances.

26 The Board may require the single coordinating physician, nurse  
27 practitioner, or physician assistant to be a specialist in addictive medicine, or to  
28 consult with a specialist in addictive medicine.

1       C.     **Submit to Tests and Samples.** Respondent, at her expense, shall  
2 participate in a random, biological fluid testing or a drug screening program which  
3 the Board approves. The length of time and frequency will be subject to approval  
4 by the Board. Respondent is responsible for keeping the Board informed of  
5 Respondent's current telephone number at all times. Respondent shall also ensure  
6 that messages may be left at the telephone number when she is not available and  
7 ensure that reports are submitted directly by the testing agency to the Board, as  
8 directed. Any confirmed positive finding shall be reported immediately to the  
9 Board by the program and Respondent shall be considered in violation of  
10 probation.

11             In addition, Respondent, at any time during the period of probation, shall  
12 fully cooperate with the Board or any of its representatives, and shall, when  
13 requested, submit to such tests and samples as the Board or its representatives may  
14 require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other  
15 controlled substances.

16             If Respondent has a positive drug screen for any substance not legally  
17 authorized and not reported to the coordinating physician, nurse practitioner, or  
18 physician assistant, and the Board files a petition to revoke probation or an  
19 accusation, the Board may suspend Respondent from practice pending the final  
20 decision on the petition to revoke probation or the accusation. This period of  
21 suspension will not apply to the reduction of this probationary time period.

22             If Respondent fails to participate in a random, biological fluid testing or  
23 drug screening program within the specified time frame, Respondent shall  
24 immediately cease practice and shall not resume practice until notified by the  
25 Board. After taking into account documented evidence of mitigation, if the Board  
26 files a petition to revoke probation or an accusation, the Board may suspend  
27 Respondent from practice pending the final decision on the petition to revoke  
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1 probation or the accusation. This period of suspension will not apply to the  
2 reduction of this probationary time period.

3 D. **Therapy or Counseling Program.** Respondent, at her expense, shall  
4 participate in an on-going counseling program until such time as the Board  
5 releases her from this requirement and only upon the recommendation of the  
6 counselor. Written progress reports from the counselor will be required at various  
7 intervals.

8 ACCEPTANCE

9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
10 discussed it with my attorney, Benjamin Theule. I understand the stipulation and the effect it will  
11 have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary  
12 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
13 of the Board of Registered Nursing.

14  
15 DATED: 12/12/12

  
16 FREDERICA DEBORAH YARBOROUGH  
Respondent

17  
18 I have read and fully discussed with Respondent Frederica Deborah Yarborough the terms  
19 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
20 Order. I approve its form and content.

21 DATED: 12/19/12

  
22 BENJAMIN THEULE  
Attorney for Respondent

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Dated: 1-7-13

KAMALA D. HARRIS  
Attorney General of California  
LINDA K. SCHNEIDER  
Supervising Deputy Attorney General

RITA M. LANE  
Deputy Attorney General  
*Attorneys for Complainant*

15



**Exhibit A**

**Accusation No. 2012-142**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 LINDA K. SCHNEIDER  
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7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No.

2012-142

12 **FREDERICA DEBORAH YARBOROUGH**  
13 **3121 Vista Diego Road**  
14 **Jamul, CA 91935**

**A C C U S A T I O N**

15 **Registered Nurse License No. 624872**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about August 25, 2003, the Board of Registered Nursing issued Registered  
24 Nurse License Number 624872 to Frederica Deborah Yarborough (Respondent). The Registered  
25 Nurse License was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on June 30, 2013, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the

1 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
2 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
3 and the board may inquire into the circumstances surrounding the commission of the crime in  
4 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
5 qualifications, functions, and duties of the licensee in question.

6 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
7 'registration.'"

8 9. Section 2761 of the Code states:

9 "The board may take disciplinary action against a certified or licensed nurse or deny an  
10 application for a certificate or license for any of the following:

11 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

12 "....

13 "(f) Conviction of a felony or of any offense substantially related to the qualifications,  
14 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
15 conclusive evidence thereof.

16 "...."

17 10. Section 2762 of the Code states:

18 "In addition to other acts constituting unprofessional conduct within the meaning of this  
19 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the  
20 following:

21 "....

22 "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
23 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
24 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
25 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
26 ability to conduct with safety to the public the practice authorized by his or her license.

27 "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-  
28 administration of any of the substances described in subdivisions (a) and (b) of this section, or the

possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

“...”

11. Section 2765 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.”

#### REGULATIONS

12. California Code of Regulations, title 16, section 1444, states:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

“(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

“(b) Failure to comply with any mandatory reporting requirements.

“(c) Theft, dishonesty, fraud, or deceit.

“(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.”

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1 13. California Code of Regulations, title 16, section 1445 provides:

2 “....

3 “(b) When considering the suspension or revocation of a license on the grounds that a  
4 registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such  
5 person and his/her eligibility for a license will consider the following criteria:

6 “(1) Nature and severity of the act(s) or offense(s).

7 “(2) Total criminal record.

8 “(3) The time that has elapsed since commission of the act(s) or offense(s).

9 “(4) Whether the licensee has complied with any terms of parole, probation, restitution or  
10 any other sanctions lawfully imposed against the licensee.

11 “(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the  
12 Penal Code.

13 “(6) Evidence, if any, of rehabilitation submitted by the licensee.”

#### 14 COST RECOVERY

15 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
16 administrative law judge to direct a licensee found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case.

#### 19 FIRST CAUSE FOR DISCIPLINE

20 (April 12, 2011, Conviction for Reckless Driving on July 1, 2010)

21 15. Respondent is subject to disciplinary action under Code sections 490 and 2761,  
22 subdivision (f), on the grounds that she was convicted of a crime that is substantially related to  
23 the qualifications, functions and duties of a registered nurse. The circumstances are as follows:

24 a. On April 12, 2011, in a criminal case entitled *The People of the State of California v.*  
25 *Frederica Deborah Yarborough*, San Diego Superior Court, East County Division case number  
26 C303056, Respondent was originally charged with violating Vehicle Code section 23152,  
27 subdivision (a), driving under the influence of an alcoholic beverage and a drug, combined, a  
28 misdemeanor. However, the complaint was amended and she was convicted on her plea of guilty

1 of violating Vehicle Code section 23103, subdivision (a), reckless driving with the agreement that  
2 sentencing would be imposed as if it were an alcohol-related driving conviction.

3 b. The facts that led to the conviction are that on July 1, 2010, two California Highway  
4 Patrol (CHP) officers responded to a request from the US Border Patrol to evaluate a possible  
5 intoxicated driver on Deerhorn Valley Road at Honey Springs in Jamul, California. The CHP  
6 officers arrived at the scene and observed Respondent sitting on the ground to the left of her  
7 vehicle, which was stopped facing the wrong way on the shoulder. Respondent was asked to  
8 stand and had an unsteady gait as she walked to the rear of her vehicle and slurred her words as  
9 she talked to the CHP officer. Respondent appeared wet with a red substance all over the front of  
10 her clothes. When the CHP officer asked Respondent what was on her clothes, she stated she had  
11 vomited on herself while in her vehicle. Respondent admitted she drank three strawberry martinis  
12 earlier in the evening, and had taken a half box of Benadryl consisting of approximately  
13 25-30 pills, then she decided to drive to a friend's house off Deerhorn Valley Road. Respondent  
14 told the CHP officer that when the Benadryl took effect she pulled over because she felt too  
15 intoxicated to drive the vehicle any further, so she stopped her vehicle on the side of the road and  
16 then vomited on herself. Respondent was administered a series of field sobriety tests, which she  
17 failed. Respondent agreed to a preliminary alcohol screening (PAS) test which yielded a result of  
18 .057 percent blood alcohol content (BAC) at 0232 hours. Respondent was arrested and taken to  
19 Alvarado Hospital where she agreed to submit to a blood test at 0415 hours.

20 c. As a result of the conviction, Respondent was sentenced to summary probation for  
21 3 years, and ordered to adhere to Standard Alcohol Conditions per Vehicle Code section 23600,  
22 complete a First Conviction Educational Program, complete a Mothers Against Drunk Drivers  
23 (MADD) impact panel program, violate no laws, pay various fines and fees, and not drive without  
24 a valid driver's license and liability insurance.

25 ///

26 ///

27 ///

28 ///

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Use of Alcohol in a Dangerous Manner)**

3 16. Respondent's license is subject to discipline under Code section 2762,  
4 subdivision (b), in that Respondent used alcohol to an extent dangerous to herself and others by  
5 drinking alcohol and using large quantities of Benadryl at the same time and then driving, as is set  
6 forth in paragraph 15, above, which is incorporated by this reference.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Criminal Conviction Involving the Consumption of Alcohol)**

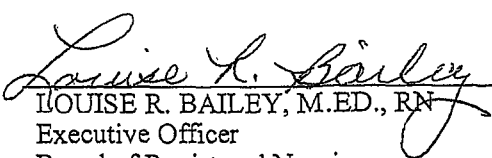
9 17. Respondent's license is subject to discipline under Code section 2762,  
10 subdivision (c), in that Respondent was convicted of a criminal offense involving the  
11 consumption of alcohol, as is set forth in paragraph 15, above, which is incorporated by this  
12 reference.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
15 and that following the hearing, the Board of Registered Nursing issue a decision:

- 16 1. Revoking or suspending Registered Nurse License Number 624872, issued to  
17 Frederica Deborah Yarborough;
- 18 2. Ordering Frederica Deborah Yarborough to pay the Board of Registered Nursing the  
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
20 Professions Code section 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: September 1, 2011

  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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